

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 57 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

ASHOKVATIKA COOPERATIVE HOUSING SOCIETY LIMITED

Versus

ASHOKKUMAR CHINUBHAI BHARVAD HUF THRO' KARTA

Appearance:

MR JITENDRA M PATEL for Petitioners

MR AB MUNSHI for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 16/02/2001

ORAL JUDGEMENT

1. Appeal admitted. Mr. A.J.Patel, learned advocate
appears for the respondent and waives service of notice.

2. The dispute between the parties spins around

Survey No. 451 of Vadai admeasuring approximately 17705 sq mtrs falling under the Town Planning Scheme No. 23 (proposed) of Ahmedabad.

3. The appellants are the original defendant no. 1,2 ad 3 in Civil Suit No. 5899/2000 preferred by the present respondent in the City Civil Court at Ahmedabad. The suit is for declaration and injunction.

4. The appellant represent one Ashokvatika Cooperative Housing Society Ltd who had entered into an agreement to purchase said piece of land somewhere in 01.05.1972. According to them the price thereof was paid on 15.12.1980 and possession of the land was obtained by the society. Because the land was falling under green belt, the society could not make use of that piece of land for constructing the house for the members of the society nor could the society ask for execution of a sale deed in their favour. After the Land Ceiling Act came to an end in 1999, the society was planning to take the follow up action when the present suit came to be filed by the plaintiff/respondent.

5 The plaintiff has filed the suit mainly on a document which is claimed to have been executed by the Chairman of the defendant society in 09.08.1988. Cancelling the deed of 1972 and exonerating the liability and obligation of respective parties.

6. The Commissioner was got appointed by the Court for preparation of a panchnama of the place. That report is produced on 08.12.2000. Objections were raised against that report. If these two documents are seen it is clear that the Commissioner went in presence of both the sides. It is indicated that defendant no.1 was represented by Parmar Ushaben Jagdishbhai, defendant no. 3 Maheshbhai Samubhai Parmar, defendant no 4 Bharatkumar Ramanlal Bharvad, defendant no.5 Gandabhai Dahyabhai Bharvad were present when the report was prepared. The Commissioner's report indicates possession of the plaintiff. The Court after considering rival side contentions and voluminous documentary evidence in the form of contemporaneous revenue records, passed the impugned order under notice of motion allowing the same and granting interim relief in terms of para 24 (a) i.e. pending hearing and final disposal of the suit, Defendant no. 1,2 and 3 and or their agents, servants power of attorney holder or anybody claiming through or under them have been restrained by an order of injunction from interfering with or forcibly entering into the land bearing Survey No. 451, Final Plot no. 789 and 813 of

Town Planning Scheme No. 28 (proposed) of Wadaj.

7. Aggrieved by this, the present appeal from order is preferred by original defendant no. 1,2, and 3. The appeal is taken up for final hearing and disposed of with consent of parties.

8. Mr.J.M. Patel, learned advocate for appellant has taken this Court through various documents. He has given thrust to the documents of 1972, 1980 and submitted that the land is in possession of defendants. He submitted further that if the document of cancellation of agreement of 1988 is considered there is no reference whatsoever to return of consideration nor is there any reference about return of consideration of the land to the plaintiff by the defendant. He submitted that the panchnama is drawn behind the back of the defendants and therefore the Court below ought to have rejected the interim relief.

9. On the other hand learned advocate Mr.A.J.Patel, has drawn attention of this Court to a panchnama in an earlier suit of 1998 which also indicates possession of the present plaintiff. He has also drawn attention of this Court to contemporaneous revenue record showing entry of that land in question was under possession (actual) and cultivation of the plaintiff. He has drawn attention of this Court to an affidavit sworn by Mr.P.B.Rao who was witness to an execution of the cancellation document of August, 1988 where he has stated that consideration was to be returned when the society enters into a deal for another piece of land.

10. Having regard to the rival side contentions, it appears that there is a genuine dispute about the possession of land. There is also a dispute about the title. Undisputedly, the plaintiff has received consideration in respect of the land following an agreement of 1972 and that consideration has not been returned to the defendant society. The title and possession are questions which are subject matter of the suit which can be determined after proper evaluation of evidence. In order that the interest of both the sides is protected, the appeal is disposed of with following modification in the order of the Trial Court.

11. Parties are directed to maintain statusquo in respect of the suit land. The property will be maintained as it is and will not be developed or transferred in any manner till final disposal of the suit. Appeal is accordingly disposed of. No costs.

(A.L. DAVE, J.)

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